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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,948	02/04/2002	Dale E. Gulick	2000.052000/TT4034	5869
23720	7590	09/19/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			SZYMANSKI, THOMAS M	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/066,948	GULICK, DALE E.	
	Examiner	Art Unit	
	Thomas Szymanski	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/04/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/11/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:
 - I. Claims 1-46, drawn to Granting a request for system action if expiration of a timer occurs before a result of authorization for system action is received.
 - II. Claim 47, drawn to Refusing a request for system action if expiration of a timer occurs before a result of authorization for system action is received.
2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.
3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.
4. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Art Unit: 2134

5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
6. During a telephone conversation with Mark Sincell on 8/30/2005 a provisional election was made without traverse to prosecute invention I, claims 1-46. Affirmation of this election must be made by applicant in replying to this Office action. Claim 47 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
7. Claims 1-46 have been examined.

Information Disclosure Statement

8. The information disclosure statement filed 10/11/2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Double Patenting

9. Applicant is advised that should claims 1-7 be found allowable, claims 8-14 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Specification

10. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

11. The applicant is requested to review the specification and update the status of all co-pending applications made mention of, replacing attorney docket numbers with current U.S. application or patent numbers when appropriate. References to U.S. applications or patents should make it clear as to what the number refers (e.g. U.S. Patent No. #), instead of listing only the number.

12. The use of the trademark "Super I/O" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Art Unit: 2134

13. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 2-3, 9-10, 16-17, 27, 36, and 41-42 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. Claim 2-3, 9-10, 16-17, 27, 36, and 41-42 recites the limitation "RMCP". There is insufficient antecedent basis for this limitation in the claim. As provided for within the specification (page 7 line 2, page 8 line 5) this acronym is defined as RCMP and used both as that and RMCP. Therefore it is unclear as to what this abbreviation is actually referring.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2134

18. Claims 1-6, 8-13, 15-20, and 22-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Rakavy et al U.S. Patent No. 5,978,912.

19. Regarding Claim 1: receiving a request for action (Fig 4, Col 9 line 1 – Col 10 line 19) As stated a message is received from a management station.

Initiating a timer (Fig 9, Col 16 line 10 – Col 17 line 17) The timer is initiated as is necessary to perform the functions of regulating the system against failure as described.

Generating request for authorization (Fig 4, Col 9 lines 40-52) As stated the system generates a request for authorization upon receiving a request from the system for action.

Evaluating result for authorization if received before timer expires (Col 9 line 40 – Col 10 line 19) The result for authentication in the system is automatically evaluated when received, in the event that the timer expires the result would not have been received.

Granting request for action if timer expires before authorization received (Fig 9, Col 16 line 10 – Col 17 line 17) As taught if there is no response from the system and the timer is allowed to expire it will automatically perform such actions.

20. Regarding Claim 2: receiving remote management and control protocol request for system action (Col 9 line 1 – Col 10 line 65) As provided the system receives the message from the management station as to what the action for the system will be, as stated it is referred to as the specification of the type of reboot.

21. Regarding Claim 3: system action is a reset, boot, or reboot (Col 10 lines 59-66, Col 11 lines 25-50) Rakavy et al states that the system action is any type of particular

Art Unit: 2134

reboot and additionally allows for such reboot being simply a reset as provided for by the enhanced bios during the running of a particular operating system as stated.

22. Regarding Claim 4: initiating a watchdog timer (Fig 9, Col 16 line 10 – Col 17 line 17) As provided for by Rakavy et al a watchdog timer is used to monitor the system for responses if no response is provided the timer allows for the system to automatically reset itself.

23. Regarding Claim 5: generating authorization requests includes generating a system management interrupt (Col 16 line 24-64) The system uses SMI as stated for means to provide for implementation of particular routines as they are received and thus negotiated by the system for processor time.

24. Regarding Claim 6: authorization request occurring inside of the system management mode (Col 16 line 24-64) The system runs in such a mode while these actions are taking place as stated by Rakavy et al.

25. Regarding Claims 24 and 25: SMI register (Col 16 lines 40-51) As stated the microprocessor provides for a SMI pin that within the implementation of such a system such as the Intel microprocessor referenced is connected to an affiliated SMI register contained within the integrated circuit of the processor.

Ethernet Controller (Fig 2.170, Col 5 lines 6-31, Col 12 lines 30-37)

26. Regarding Claims 8-13, 15-20, and 22-45: Claims 8-13, 15-20, and 22-45 represent a computer readable medium, computer system, and a method implementation of claims 1-6 and as such are rejected on the same basis.

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 7, 14, 21, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakavy et al as applied to claim 1 above.

29. As stated by Rakavy et al it is a desirable feature to be able to program the timer to a reasonable interval of time dependent upon the implementation of the system. (Col 17 lines 1-17). Further within a system that is utilized by an individual it is desirable for the time that a person waits for a response from the system to be minimal.

30. As such Rakavy et al fails to teach specifically programming the timer for a value of approximately two seconds

31. However, As stated the timer allows for programming of any time span that seems sufficient for the intended purposes. Since a time limit is required for the functionality of the device and absent the specified time being shown relating in a critical manner, one of ordinary skill in the art at the time of the applicant's invention would recognize that programming such timer for any time period including approximately two seconds is obvious so as to provide for a reasonable period of time for the implementation of the given system.

Art Unit: 2134


Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of art disclosed by the references cited and the objections made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).

33. Inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas M. Szymanski who can be reached at (571) 272-8574. The examiner's normal working schedule is between the hours 8:00am – 4:30pm (EST), Monday – Friday.

34. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached at (571) 272-3838. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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